

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action at the:)	Enforcement Order
)	
Hamilton Street Bridge Site)	No. <u>DE-1533</u>
111 N. Erie Street		
Spokane, Washington		

To: Spokane River Properties, LP/Brown Building Materials (SRP)

I.

Jurisdiction

This Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D.050(1) RCW.

II.

Statement of Facts

1. The Site, as shown in Exhibit A, is located at 111 North Erie Street in Spokane, Washington and is made up of three adjacent properties: (1) The Burlington Northern and Santa Fe Railway Company (BNSF) property formerly leased by the American Tar Company (ATC); (2) the former Spokane Manufactured Gas Plant (SGP) property previously owned by Avista Corporation (formerly The Washington Water Power Company) and currently owned by Spokane River Properties, LP/Brown Building Materials (SRP); and (3) the existing riverfront property previously owned by Chicago

Milwaukee & Saint Paul Railroad Company and currently owned by SRP. The Site also includes easements and limited parcels formerly owned by SGP that were deeded to the Washington State Department of Transportation (WSDOT) for the placement of footings for the Hamilton Street Bridge.

2. The SGP began operations at the Site sometime between 1905 and 1909, and was owned by the Union Gas Company. The property was sold to Spokane Gas & Fuel Company in 1909. In 1913, a northern portion of the land was sold to the former Chicago Milwaukee & Saint Paul Railroad (CM&SPR) to facilitate the construction of a track along the riverbank. The riverbank was extended into the river up to a length of 230 ft. to achieve this construction.

3. SGP manufactured coal gas and carbureted water gas at the Site until 1948. From 1948 to approximately 1956, a propane-air system was operated from the facility for gas mixing, storage, and distribution. The propane-air system was utilized until natural gas was available. Reflecting a change from coal gas manufacturing to natural gas distribution, SGP changed its name to the Spokane Natural Gas Company in 1956. In 1958, the Spokane Natural Gas Company merged with The Washington Water Power Company (WWP). WWP stored and dispersed natural gas at the Site until 1962 or 1963.

4. Richard Brown leased the SGP property from 1963 to 1978 where he operated Brown Building Materials. He purchased the SGP property in 1978. Mr. Brown also purchased portions of the Site in 1981 that were formerly owned by the CM&SPR. In 1982, the property was deeded to SRP, a Washington limited partnership, with Mr. Brown as the general partner.

5. A coal tar processing operation previously operated on the BNSF property formerly leased by ATC. The operation is believed to have started concurrently with the SGP in approximately 1905, and continued to formulate or distribute products until 1967. The C.G. Betts Company operated the facility until the early 1930's when the operations were taken over by ATC. The operation produced a variety of hydrocarbon-based products and intermediates including roofing tar, boat pitch, post paint, and naphthalene, among others. The ATC leased the property from BNSF until 1967. Mr. Brown leased the ATC property from BNSF between 1968 and 2001.

6. In 1987, the United States Environmental Protection Agency (EPA) completed a preliminary assessment of both the SGP property and the BNSF property and recommended additional investigations for the BNSF property. EPA conducted a Comprehensive Environmental Response, Compensation and Liability ACT (CERCLA) screening site investigation of the BNSF property in 1988 and of the SGP property in 1995 and referred both sites to Ecology for consideration.

7. An environmental investigation of the Site was conducted by WSDOT in the fall of 1997. The results of this work are presented in the report: *Focused Remedial Investigation and Feasibility Study Report – SR290 Southriver Drive Alignment Report*. The report was prepared by EMCON for WSDOT, August 28, 1998. The study showed the presence of coal tar waste covering an area of two to three acres and extending to a depth in excess of forty feet. The study documented contamination of soil by various hydrocarbons, particularly polycyclic aromatic hydrocarbons (PAHs).

8. Ecology provided a letter to WSDOT, dated December 18, 1998, under the Voluntary Cleanup Program. The letter summarizes previous investigations, hazardous substance releases, and recommendations for additional investigation. Based on this letter

and other Site information, the volume of contaminated soils on the Site was estimated to be over 50,000 cubic yards.

9. Avista has performed both historical studies at the Site and field investigative studies of the former SGP property. The results further defined the lateral boundaries of the soil contamination. These studies are presented in the following documents:

Supplemental Investigation – Former Spokane Manufactured Gas Plant report. Prepared by Landau Associates, Inc. for the Washington Water Power Company, January 7, 1999.

Historical Information Study – Vicinity of Former Spokane Manufactured Gas Plant Property Report. Prepared by Landau Associates Inc. for Washington Water Power Company, October 23, 1998.

Preliminary Site Investigation – Former Spokane Manufactured Gas Plant. Prepared by Landau Associates, Inc. for the Washington Water Power Company, February 9, 1998.

10. In 1998, BNSF performed a field investigation at the property leased by ATC from BNSF. Contaminants related to the coal tar were found in soil samples but were not detected in ground water samples from monitoring wells installed on the property leased by ATC from BNSF. The results of the study are presented in the following document:

Focused Site Assessment. Former American Tar Company Site, Spokane, Washington. Prepared by GeoEngineers for BNSF, April 30, 1999.

11. Avista conducted a second supplemental investigative effort at the Site to obtain additional information about ground water and soil contamination in 1999. Results showed contaminants associated with manufactured gas plant processes and/or coal tar processing were found in soil samples as deep as eighty feet below ground surface. These contaminants include volatile organic hydrocarbons (VOCs) and semivolatile organic

hydrocarbons (sVOCs), polycyclic aromatic hydrocarbons (PAHs) including carcinogenic PAHs or cPAHs, and metals. Relatively few of these hazardous substances were detected in ground water samples analyzed from areas surrounding the soil contaminated area. The investigations show that any hazardous substances partitioning into the groundwater are undergoing degradation through physical, chemical, and biological processes. The investigations indicate that the Spokane River is not being adversely impacted by the Site.

12. In certified correspondence dated January 15, 1999, Ecology notified Avista and BNSF of the preliminary finding of potential liability and requested comment on those findings. On June 11, 1999, Ecology notified Avista and BNSF of their status as “potentially liable persons” under Chapter 70.105D.040 RCW.

13. In certified correspondence dated June 11, 1999, Ecology notified Brown Building Materials/SRP of the preliminary finding of potential liability and requested comment on these findings. On September 10, 1999, Ecology notified Brown Building Materials/SRP of its status as a “potentially liable person” under Chapter 70.105D.040 RCW.

14. Avista and BNSF entered into an Agreed Order with Ecology on March 13, 2000, and completed a Remedial Investigation (RI) and a focused Feasibility Study (FS). The completed RI report is entitled:

Second Supplemental and Remedial Investigation, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, February 2001.

The FS examined cleanup alternatives that protect human health and the environment. Remedial alternatives for both ground water and soils were analyzed to determine which combination of cleanup alternatives would be most appropriate for the

Site. Five alternatives were evaluated based on MTCA criteria after an initial screening of processes and alternatives. The FS is presented in the following document:

Feasibility Study Report, Hamilton Street Bridge Site, Spokane, Washington. Prepared by GEI Consultants, Inc. for Avista and BNSF, November 30, 2000.

15. Based upon the results of the RI and the FS, Ecology prepared a Draft Cleanup Action Plan (DCAP). As required under MTCA, this DCAP was made available for public review and comment from July 2 to August 1, 2001. SRP submitted written comments stating concerns that the selected remedy with the institutional controls would not provide for the future development of the property. Ecology's Responsiveness Summary to the comment asserts that the institutional control, in the form of a Restrictive Covenant, allows for development but establishes safety, waste management, and environmental protection protocols to assure that the selected remedy remains protective of human health and the environment. A Final Cleanup Action Plan (CAP), Exhibit B, was issued on August 10, 2001.

16. Avista and BNSF entered into a Consent Decree No. 02205445-0 with Ecology on September 11, 2002 to implement the cleanup action described in the CAP (Exhibit B). SRP elected not to participate in negotiations nor to sign the Consent Decree.

17. The cleanup action for the Site consists of: covering contaminated soils with clean soil or gravel, stormwater management, construction of a streambank bioengineering along the impacted shoreline of the Spokane River, ground water monitoring, institutional controls that include a Restrictive Covenant and five-year reviews.

18. Under the terms of the Consent Decree, Avista and BNSF have submitted and have finalized, upon Ecology's approval, the following reports:

Engineering Design Report, Hamilton Street Bridge Site, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, May 28, 2003.

Compliance Monitoring Report, Hamilton Street Bridge Site, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, May 28, 2003.

Institutional Control Plan, Hamilton Street Bridge Site, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, May 29, 2003.

Plans and Specifications for Hamilton Street Bridge Site Cleanup Action, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, January 8, 2004.

Operation and Maintenance Plan, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates, Inc. for Avista Corporation and BNSF, January 8, 2004.

Avista and BNSF has also submitted for Ecology's review and subsequently finalized the following report:

Health and Safety Plan for Cleanup Action, Hamilton Street Bridge Site, Spokane, Washington. Prepared by Landau Associates Inc. for Avista Corporation and BNSF, May 28, 2003.

These reports completed the requirements needed to start implementation of the cleanup action.

19. BNSF executed and recorded a Restrictive Covenant for the BNSF property in January 21, 2003.

20. Under the terms of the Consent Decree, Avista and BNSF were required to undertake all reasonable efforts to secure from the owners of SRP: (a) An agreement to provide access for the purpose of conducting the necessary actions on the property, and (b) An agreement to provide institutional controls on the property, including a Restrictive Covenant.

21. The Decree also provides that if any access or institutional control were not obtained within the schedule specified, Defendants shall promptly notify Ecology in writing and shall include in that notification a summary of steps that Defendants have taken to attempt to comply with the requirements.

22. Between November 2002 and February 2003, SRP had discussions with Ecology on revisions to the proposed Restrictive Covenant in the CAP to address future site development concerns. On January 27, 2003, Ecology sent SRP a revised Restrictive Covenant, attached as Exhibit C, for properties owned by SRP.

23. Ecology received a letter from Avista dated August 22, 2003, requesting a 60-day extension to have the Restrictive Covenant recorded for the SRP properties and to enable Avista and SRP to continue negotiations for access and institutional controls. Ecology approved the deadline for the filing of the Restrictive Covenant to November 8, 2003.

24. Ecology received a letter from Avista dated November 6, 2003 requesting for a second extension to February 6, 2004 to have the Restrictive Covenant filed as resolution

to access and institutional control issues were still being worked out. Ecology approved this second extension.

25. On February 4, 2004, Avista requested and was approved for a third extension to March 16, 2004. Avista was still attempting to negotiate with SRP for access and institutional controls.

26. In correspondences dated February 24, 2004, Ecology notified Avista, BNSF, and SRP that the extension to March 16, 2004 was the last extension to be granted and advised the parties to come to a settlement on access and institutional controls.

27. On March 16, 2004, Avista notified Ecology in writing that Avista cannot implement the cleanup action as negotiations between Avista and SRP for Site access and providing for institutional controls were not successful. Avista provided documentation on steps taken by Avista to attempt to secure access and institutional controls.

28. On April 30, 2004, Ecology received a letter dated April 26, 2004 from Mr. Eric Brown, one of the partners of SRP, stating that SRP as in the past will negotiate in good faith to reach a reasonable agreement with Avista.

29. On May 11, 2004, Ecology sent a letter to Mr. Eric Brown of SRP stating that Ecology is prepared to use its enforcement authority under MTCA to advance implementation of the cleanup action at the Site if negotiations are not successful by June 30, 2004.

III.

Ecology Determinations

1. Spokane River Properties, LP/Brown Building Materials (SRP) is an "owner or operator" as defined under Chapter 70.105D.020(11) RCW of a "facility" as defined in Chapter 70.105D.020(4) RCW.

2. The facility is known as Hamilton Street Bridge Site and is located at 111 North Erie Street, Spokane, Washington.

3. The substances found at the facility as described above are "hazardous substances" as defined under Chapter 70.105D.020(7) RCW.

4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined under Chapter 70.105D.020(20) RCW.

5. By a letter dated September 10, 1999, Ecology notified SRP/Brown Building Materials of its status as a "potentially liable person" under Chapter 70.105D.040 RCW after notice and opportunity for comment.

6. Remedial Action at the Site cannot be completed without SRP's agreement for access and Restrictive Covenant.

7. Based on the information presented to Ecology regarding the negotiations between the PLPs, BNSF and Avista have undertaken all reasonable efforts to secure from the owners of SRP: (a) An agreement to provide access for the purpose of conducting the

necessary actions on the property, and (b) An agreement to provide institutional controls on the property, including a Restrictive Covenant.

8. Pursuant to Chapter 70.105D.040(2) RCW, SRP is strictly liable, jointly and severally, for all remedial actions at the Site.

9. Pursuant to Chapters 70.105D.030(1) and 70.105D.050 RCW, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

10. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that SRP take the following remedial actions and that these actions be conducted in accordance with 173-340 WAC unless otherwise specifically provided for herein.

1. SRP shall begin implementation of the cleanup action selected in the Final CAP as set forth in the Scope of Work and Schedule (Exhibit C) no later than September 1, 2004. The details of the cleanup action are described in the Ecology-approved Engineering Design Report (May 28, 2003), and the Plans and Specifications Report (January 8, 2004).

SRP may choose to coordinate with Avista and BNSF on the implementation of the cleanup action.

2. SRP shall perform compliance monitoring as required in the Final CAP in accordance with the Compliance Monitoring Plan (May 28, 2004).

3. SRP shall record the Restrictive Covenant, attached as Exhibit D, for the SRP-owned portions of the Site no later than September 1, 2004.

4. A cleanup action report, summarizing all construction activities and changes or modifications, shall be submitted to Ecology no later than ninety (90) days after completion of construction.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notice

Chapter 70.105D.030(2)(a) RCW requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

SRP shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in 173-340-550(2) WAC. Spokane River Properties, LP shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Name	Teresita Bala, Site Manager
Address	Washington State Department of Ecology Eastern Regional Office Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205-1295 Tel: (509) 329-3543 Fax: (509) 329-3572 E-Mail: tbal461@ecy.wa.gov

SRP shall designate one individual to act as a Project Coordinator, and shall inform Ecology of this individual's identity, telephone number and mailing address within fifteen (15) days of receipt of this Order. SRP may choose to join up with Avista and BNSF on project coordination.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and SRP, and all documents including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or SRP change project coordinator(s), written notification shall be provided to Ecology or SRP at least ten (10) calendar days prior to the change.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. SRP shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their involvement at the Site. SRP shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work

required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except when necessary to abate an emergency situation, SRP shall not perform any remedial actions at the Hamilton Street Bridge Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions. 173-340-400(6)(b)(i) WAC requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by SRP. When entering the Site under Chapter 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by SRP during an inspection unless doing so would interfere with Ecology's sampling. SRP shall allow

split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

A public participation plan for the Site has been prepared for the Site. Ecology shall maintain the responsibility for public participation at the Site. SRP shall help coordinate and implement public participation for the Site.

8. Retention of Records

SRP shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of SRP, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

SRP may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. SRP is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from SRP.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may Order SRP to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by SRP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest SRP may have in the Site or any portions thereof, SRP shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, SRP shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

A. All actions carried out by SRP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B. of this section.

B. Pursuant to Chapter 70.105D.090(1) RCW, the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in the CAP.

SRP has a continuing obligation to determine whether additional permits or approvals addressed in Chapter 70.105D.090(1) RCW would otherwise be required for the remedial action under this Order. In the event SRP determines that additional permits or approvals addressed in Chapter 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or SRP shall be responsible to contact the

appropriate state and/or local agencies. If Ecology so requires, SRP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by SRP and on how SRP must meet those requirements. Ecology shall inform SRP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. SRP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to Chapter 70.105D.090(2) RCW, in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in Chapter 70.105D.090(1) RCW would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and SRP shall comply with both the procedural and substantive requirements of the laws referenced in Chapter 70.105D.090(1) RCW, including any requirements to obtain permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon SRP's receipt of written notification from Ecology that SRP has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

VII.

Enforcement

1. Pursuant to Chapter 70.105D.050 RCW, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event SRP refuses, without sufficient cause, to comply with any term of this Order, SRP will be liable for:
 - (1) Up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Chapter 70.105D.060 RCW.

Effective date of this Order: July 13, 2004.

Joseph J. Gaudster
Ecology Signature